

(2017) 02 JH CK 0083

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 1040 of 2008 in Sessions Trial No. 23 of 2007

Babu Lal Ram @ Purna Khurna Ram

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, Section 498A

Citation : (2017) 173 AIC 781 : (2017) 1 Crimes 732 : (2017) 2 JBCJ 230 : (2017) 2 JLJR 48

Hon'ble Judges : Ananda Sen, ACJ.

Bench : Single Bench

Advocate : Mr. A.K. Kashyap, Sr. Advocate Mr. D. K. Prasad, Advocate, for the Appellant; Mr. Pankaj Kumar, A.P.P. and Mr. Azimuddin, A.P.P, for the State

Final Decision : Allowed

Judgement

Ananda Sen, A.C.J.—;This criminal appeal is directed against the judgment of conviction and order of sentence dated 01.07.2008 and 03.07.2008 respectively, passed by the Additional Sessions Judge, Fast Track Court-III, Chatra in connection with Session Trial No. 23 of 2007, corresponding to Piparwar P.S. Case No. 62 of 2005, whereby and where under the present appellant namely, Babu Lal Ram @ Purna Khurna Ram having been found guilty of charges under Sections 498 A & 304 B of Indian Penal Code, has been sentenced to undergo imprisonment for life for the offence under Section 304 B of the Indian Penal Code and R.I. for 03 years for the offence under Section 498 A of the Indian Penal Code. However, it was observed that both the sentences will run concurrently.

2. The case of the prosecution is that the informant (PW5), i.e. the father of the deceased, gave a fardbeyan on 01.12.2005 stating therein that six years before he performed marriage of his daughter Shanti Devi (deceased) with the present appellant and also expended some money. After sometime of the marriage, the

accused persons, i.e. present appellant, father-in-law, mother-in-law and brother-in-law started assaulting and torturing his daughter and also demanded a motorcycle. Thereafter, the 2 deceased was thrown out of their house and then she came to her parental house and stayed there for more than a year and, thereafter, few days before the occurrence, the appellant took his daughter to his house and on 01.12.2005 one Rajendra Ram came and informed him about killing of his daughter by strangulation with rope and then he went there and saw the dead body of his daughter and lodged the case.

On the basis of the aforesaid Fardbeyan of the informant Parwilwa Mochi (P.W.5), Piparwar P.S. Case No. 62 of 2005, was registered for the offence under Sections 498 A and 304 B of the Indian Penal Code, against the accused persons. Subsequently, the matter was taken up for investigation and the police examined the witnesses and sent the dead body for Post Mortem Examination. After completion of investigation, charge sheet was submitted against the present appellant, father-in-law and mother-in-law, accordingly, cognizance of the offence was taken and the case was committed to Court of Sessions for trial. The case of father-in-law and mother-in-law was tried separately.

3. The case of the defence is complete denial of his involvement and he specifically stated that at the time of occurrence he was not present.

4. In order to prove the charges against the accused, the prosecution has examined as much as ten witnesses including the Investigating Officer (PW9) and the Doctor (PW10) and the defence has examined two witness DW1 and DW2.

5. The Trial Court, after going through the materials on record and also considering the evidence of the prosecution witnesses has found the charges levelled against the appellant to be proved and, thereafter, sentenced him as aforesaid.

6. Mr. A.K.Kashyap, learned senior counsel appearing for the appellant has assailed the judgment of the learned court below on the 3 following grounds:

(I) There was no demand of dowry and torture soon before her death as the informant (PW5), i.e. the father of the deceased has specifically stated in the FIR that there was no demand of cash..

(II) The informant (PW5) is not a reliable witness as he developed the story from time to time.

(III) The ingredient of Section 498 A and 304 B of the Indian Penal Code has not been proved by the prosecution and there is no independent witness with regard to demand of dowry and torture.

(IV) The impugned judgment has illegally been passed without appreciating the evidence and, therefore, it is a fit case to set aside the impugned judgment of conviction and order of sentence.

Mr. Kashyap, in this regard, has relied upon a judgment of the Hon''ble Supreme Court rendered in the case of "Bajnath and Others v. State of Madhya Pradesh, reported in (2017) 1 SCC 101."

7. Mr. Pankaj Kumar, learned Additional Public Prosecutor, has vehemently opposed the contentions raised by the learned counsel for the appellant and contended that the occurrence took place within seven years of marriage, which has been proved by the prosecution and there was demand of dowry soon before the death as the informant (PW5) the father of the deceased has specifically stated in his evidence about the demand of dowry and torture soon before the death and PW6 the mother of the deceased and PW7 have corroborated the statement of PW5. He further contended that once the prosecution has proved the demand of dowry, torture and unnatural death then the onus is on the defence to dispute the said fact but in the instant case nothing has been elicited in the cross-examination disputing the above fact of demand of dowry, torture and unnatural death. Therefore, the learned trial court has rightly convicted and sentenced the appellant as aforesaid. There is no illegality and infirmity in the impugned judgment and, hence, this appeal may be dismissed.

8. Perused the lower court records and gone through the evidence on record minutely.

9. PW1 Sanjay Ram is one of the villagers, who heard that there was an occurrence of murder in the village. He has not stated about the demand of dowry and torture. PW2 Lakhan Ram, another covillager, has stated that he has no knowledge about the death of the deceased but he admits that he knows the appellant, who is in jail. PW3 Hiranman Mochi is also a covillager and the witness to the inquest. He specifically stated that he has no knowledge about the cause of death of the deceased. PW4 Bipat Ram did not support the prosecution case. PW5 Parwilwa Mochi is the informant and the father of the deceased. He, in his evidence, has specifically stated that his son-in-law, father-in-law and mother-in-law of the deceased, had demanded Rs. 50,000/and a motorcycle as a dowry and due to nonfulfillment of the said demand of dowry, they used to torture the deceased and he specifically stated that there was demand of dowry one week before the occurrence. He further stated that he received the information about the death of his daughter from one Rajendra Ram and, thereafter, he went to the spot and lodged the FIR. He also proved the FIR (Ext1). In his cross-examination, he admitted that on earlier occasion also the present appellant and others assaulted the deceased but he did not report the matter to the police. He admitted that he had not seen the occurrence but he had seen the dead body of the deceased. Rajendra Ram told him about the death of his daughter and earlier there was a Panchayat.

10. PW6 Madhia Devi is the mother of the deceased. She 5 corroborated the statement of PW5. She further stated that she went to the spot and saw the dead body of her daughter was lying in a cot and her hand was open and tongue was out from the mouth. She specifically stated that the deceased was

strangled to death by petticoat. In her cross-examination, she specifically stated that there was demand of Rs. 50,000/and a motorcycle as dowry by the accused persons. She further admitted that the deceased had a daughter at the time of her death.

11. PW7 Dhaneshwar Mochi is the independent witness and coworker of PW5, who got information about the occurrence from PW5 and went to the place of occurrence along with PW5 and saw the dead body of the deceased. He specifically stated in his examination-in-chief that the deceased was being tortured. He further stated that there was a Panchayat and after the Panchayat the deceased was taken to her in-laws house and after some days the occurrence has taken place. In his cross-examination, he admitted that there was a Panchayat and the matter was settled and the deceased was taken to her in laws house from her paternal house. He admitted in his cross-examination that he did not know the cause of death.

12. PW8 Jitan Ram had not supported the prosecution case. PW9 is the Investigating Officer, He stated that he received information about the occurrence in the village and reached there and investigated the matter and sent the dead body for post mortem examination and after completion of the investigation, submitted charge sheet against the present appellant and other accused persons. In his cross-examination, he admitted that PWs5 & 6 did not state anything about the demand of Rs. 50,000/by the accused persons.

13. P.W.10 is Dr. Suresh Sahu, who conducted autopsy of the dead body and found the following injuries on the persons of the deceased:"(

"(i) There was a ligature mark 1 x 1.5 cm reddish gray in colour below 6hyoid bone completely in circling the neck. On exploration there was fracture of hyoid and thyroid cartilage.

Nostrils-There was blood tinched fluid coming out through nostrils.

(ii) There was bruise on back and anterior abdominal wall, red brown in colour size 7 x 3 x 2 cm and 5 x 3 x 1 cm respectively.

(iii) Lung-Congested. Heart-Right-Full, Left-empty.

(iv) Abdomen-in-digested food material. Liver, spleen, kidney-congested.

In the opinion of the Doctor, the cause of death was asphyxia due to strangulation and the time elapsed since death 2436 hours.

In his cross-examination, he also admitted that he did not find any mark of finger on neck he only saw the ligature mark in the neck.

14. DW1 Rajendra Ram is the co-villager, who specifically stated in his examination-in-chief that the appellant was not present at the time of occurrence as he went to the Court for putting attendance. DW2 Bipin Bihar Lal is the Advocates Clerk, who specifically stated that he proved the attendance of the

appellant, taken by his brother.

15. After scrutinizing the evidence and going through the judgment cited by the learned counsel for the appellant minutely, we find that in order to prove the charge under Section 304 B IPC, the prosecution has to prove whether the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. But taking into consideration the evidence, there is no material that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband. Therefore, by taking into consideration the entire evidence, Section 304 B of the Indian Penal Code has not been attracted and the prosecution has failed to prove any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health and there is no material that there was torture with regard to demand of any dowry or valuable articles. None of the prosecution witnesses has also supported the story of PW5. PW5 developed the story with regard to demand of cash amount in Court. The I.O. has also admitted the fact that there was no demand of cash and he also admitted that PWs 5 & 6 did not state about anything about the dowry. Therefore, it was a subsequent development of the said witnesses.

16. It is well settled that the onus is on the prosecution to prove that soon before the death there was demand of dowry and torture. But in the instant case the prosecution has failed to prove that soon before the death of the deceased there was demand of dowry and torture.

17. Under the circumstances, this Court finds that the trial court has committed illegality in recording the order of conviction and sentence. Accordingly, the impugned judgment of conviction and sentence dated 1st July, 2008 and 3rd July, 2008 respectively, passed by the trial court in Sessions Trial No. 23 of 2007 against this appellant, is hereby set aside. The appellant, who is in custody, is directed to be set at liberty forthwith if not wanted in connection with any other case.

18. In the result, this appeal is allowed.